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STATE FOR EB/IFD/OMA, EUR/ERA, INL/C, L/LEI AND L/EB  
DOC FOR ITA/MAC/MTA/BARLOW, OGC/NICKERSON/MANSEAU  
DOJ FOR CRIMINAL DIVISION/FRAUD SECTION/MMENDELSON/JACOBSON  
USEU FOR MRICHARDS  
PASS TO US SECURITIES AND EXCHANGE COMMISSION/ENFORCEMENT/RGRIME,  
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FROM USOECD

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TAGS: [KCOR](#) [ECON](#) [EINV](#) [ETRD](#) [PREL](#) [OECD](#)  
SUBJECT: OECD: REPORT OF JANUARY 16-18, 2007 MEETING OF THE  
WORKING GROUP ON BRIBERY

Classified By: CHARGE D'AFFAIRES CURTIS STONE FOR REASONS 1.5 (B  
AND D)

REF: Paris 829

¶1. (U) SUMMARY: At its January 16-18 meeting, the OECD Working Group on Bribery (WGB) heard remarks from Secretary General Gurria on the need for the WGB to combat corruption. The WGB also conducted a Phase 2 peer-review evaluation assessing Poland's implementation of its OECD Anti-Bribery Convention obligations. The WGB called on Poland to strengthen its corporate liability laws and close a significant loophole that makes it difficult to prosecute companies that bribe foreign public officials. The WGB reviewed country enforcement actions on foreign bribery and UN Oil-for-Food cases, began discussions on the U.K.'s discontinuation of the BAE/Saudi Arabia case and released a public statement about this inquiry. The WGB discussed a future monitoring mechanism and possible revision of the 1997 Revised Recommendation, which outlined best practices in areas such as accounting, auditing and public procurement, non-tax deductibility of bribes and other measures to combat bribery; discussed release of an annual report, compilation of WGB enforcement statistics, and distribution of a typology on bribery and public procurement; reviewed follow-up reports by Korea, Finland, and Italy, held a special session on China; addressed other accession and outreach issues, and reelected the Chair, Vice Chair and three new members of the Management Group (MG). END SUMMARY.

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## SECRETARY GENERAL GURRIA ADDRESSES WGB

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12. (U) OECD Secretary General Angel Gurría told WGB members they must provide leadership to reduce the supply side of bribery. While progress had been made, far too few countries have shown enforcement results; the WGB must do better. Gurría urged the WGB to maintain rigor in designing the next phase of its monitoring process and said it is right to review OECD anti-bribery instruments to ensure they reflect the highest standards. The Secretary General noted the WGB has an opportunity to exercise global leadership through cooperation in implementing the U.N. Convention against Corruption (UNCAC) and by reaching out to new emerging market players who must begin to address the supply side of bribery, as well as the demand side. The Secretary General said the U.K.'s decision to discontinue investigating the BAE/Saudi Arabia case was of concern for the OECD Anti-bribery Convention (the Convention) and asked the Chair and Secretariat to keep him informed. He welcomed the forum provided by the OECD for a full and fair discussion of the issues and underscored the expectation that integrity of the Convention will be maintained. Investigations and prosecutions

are where the Convention is put to the test, stated Gurría, and political will of members individually and collectively is of critical importance. He encouraged the WGB to extend its cooperation with other institutions, including the multilateral development banks.

## POLAND PHASE 2 EXAMINATION

13. (U) Lead examiners Turkey and U.K. briefed on results of the Phase 2 on-site visit to Poland, identifying key deficiencies in its enforcement efforts. WGB members agreed that Poland should: amend its law to confirm clearly that bribes to foreign public officials cannot be tax deductible, review the "impunity" provision in article 229.6 of the Penal Code which allows perpetrators of foreign bribery to escape punishment automatically by notifying authorities of the offense, and either exclude its application to foreign bribery or significantly limit its scope, work more proactively to detect, investigate and prosecute cases of foreign bribery and raise awareness of foreign bribery in the public and private sector, and consider strengthening safeguards to ensure that prosecutorial decisions cannot be affected by political and economic considerations set out in Article 5 of the Convention, a potential risk because of the dual role of the Prosecutor General and Minister of Justice. The WGB welcomed Poland's declaration that it would address a deficiency in the law on corporate liability to eliminate a requirement that a natural person be convicted as a prerequisite to proceeding against a collective entity. The WGB also recognized its responsiveness in providing information, evidence and other forms of mutual legal assistance (MLA) in other countries.

## TOUR DE TABLE DISCUSSION OF CASES

14. (U) The Tour de Table on enforcement actions on alleged foreign bribery cases is an essential part of monitoring country enforcement of the OECD Convention. Discussion is keyed to a restricted matrix of foreign bribery allegations, organized by member country. USdel presented an update on Foreign Corrupt

Practices Act matters under inquiry or investigation by DOJ and/or the Securities and Exchange Commission. In some cases, USdel noted that we had made inquiries and determined the items included in the matrix should be removed, as the allegations did not appear to involve a U.S. nexus or we could not verify any basis for the allegations. The January meeting included a special session devoted to the U.K.'s termination of an investigation into BAE plc and a defense contract with Saudi Arabia.

#### U.K. TERMINATION OF BAE/SAUDI ARABIA INVESTIGATION

15. (C) The Acting Chair noted that the U.K.'s decision in this case appeared to constitute a violation of the Convention. U.K. delegation head Jo Kuenssberg recognized the level of interest in the case and stressed the need to respect the confidentiality of the Tour de Table and the information relayed. She said the case would be part of the written follow-up of the U.K.'s Phase 2 examination scheduled for March and noted that the U.K. delegation had not requested the discussion be held in restricted session (closed to non-WGB members). Other officials present to discuss the case represented the Serious Fraud Office (SFO), the Ministry of Defense Police (MOD Police), and the office of the Attorney General (AG). The lead SFO rep expressed the U.K. delegation's willingness to answer as much as possible WGB questions, bearing in mind pending litigation. She advised that on December 14, SFO Director Robert Wardle decided to discontinue the joint SFO/MOD Police investigation based on his personal, independent judgment. Key U.K. contentions included: the BAE/Saudi Arabia case had been discontinued by SFO Director in the public interest, based on risks to international and national security; the decision was based on exceptional factors and the U.K. government did not view it as precedent-setting;

U.K. authorities did not consider the decision to have constituted a breach of Article 5 of the Convention; other investigations involving BAE involving South Africa, Tanzania, Romania, Chile, and the Czech Republic continued; and the U.K. remained committed to tackling international corruption. (Note: A detailed report of the U.K. briefing on the BAE/Saudi case is provided reftel).

16. (C) Co-lead examiners of the U.K. Phase 2 review, Canada and France, placed the decision in the wider context of that review. The Canadian delegation commented that public interest may inform prosecutorial discretion, but noted the U.K. Phase 2 report identified specific concerns regarding the U.K.'s definition of public interest and obstacles to its ability to initiate investigations of the foreign bribery offense. Nothing in the U.K.'s explanation answered these concerns. The French delegation underscored that Article 5 of the Convention prohibited consideration of the impact on relations with another State in enforcement decisions and stressed the need for safeguards on the invocation of national security. It noted France was interested in considering a Phase 2 bis examination of the U.K. following discussion of the written follow-up report in March.

17. (C) In response to U.S. questions, the SFO rep conceded that as the investigation was terminated before charges were brought and a conviction obtained, there were "unpalatable economic and commercial results that will have to be resolved in another forum." The AG rep conceded differences in views of the AG and the SFO Director on the merits of the case, but said the decision had been based on public interest considerations, rather than an assessment about the sufficiency of the evidence. He asserted that all intelligence agencies in the U.K. had agreed that national and international security risks were present in the case.

18. (C) The Italian delegation stated that it was important that the WGB understood whether the UK decision was based on specific information regarding the safety and security of the U.K. The Australian delegation stated that it fully supported proper prosecutorial discretion and considered valid a distinction between relations with another State and national and international security interests.

¶9. (C) The Acting Chair commented that it was not in the interest of the WGB or of the U.K. to be seen as throwing the Convention out the window. She said that another option was to treat this case as an exceptional situation requiring exceptional measures. She noted that the March WGB meeting would include a review of institutional issues that may have influenced the U.K. decision. The U.S. delegation commented that it was not appropriate at this juncture to conclude that Article 5 does not contemplate the proper invocation of national security interests, and it was also inappropriate to end consideration of the case before the WGB heard more about the U.K. system of implementation of the Convention and this case during the U.K.'s follow-up written review in March. The Acting Chair said the WGB would consider all possible appropriate actions at the March meeting, including a Phase 2 bis examination of the U.K., if additional questions regarding implementation remained.

¶10. (C) The Netherlands, U.S., Canada, France, Switzerland, Spain, Sweden, Chile, Italy, Norway, Greece, Estonia and Argentina joined a WGB consensus that the case presented serious concerns and that a clear public statement expressing those concerns was necessary to maintain credibility.

#### TOUR DE TABLE - OTHER ISSUES

¶11. (SBU) ATTENTION: Please be advised the following information summarizes an OECD restricted document; names of

individuals and/or companies should not be disclosed. A summary of delegates' statements focused on foreign bribery case updates and other developments is set forth below:

GERMANY: Reported the Siemens/ENEL (Italy) case, in which Siemens allegedly had made improper payments of 6 million Euro, continues. Germany is very satisfied with the mutual legal assistance (MLA) provided by Italian authorities; reported the Freeport/Manila case continues, and is divided into one case for German prosecution and one case for Italian prosecution; confirmed that Germany cannot provide MLA unless a criminal case is proceeding; noted ten Oil-For-Food (OFF) cases in four different districts had been consolidated under one prosecutor who is investigating the illegal breaking of the Iraq embargo; advised that most of the cases involving Siemens are being handled by prosecutors in Munich, who intend to brief the WGB after preliminary investigations are completed; and requested deletion of the Bristol Myers Squibb case from the matrix of ongoing cases. USdel noted an ongoing SEC investigation, activity in Germany by a subsidiary of a publicly traded company, and advised that the case should not be deleted from the matrix.

ARGENTINA: Reported no update on cases, but advised that Argentina is completing a self-evaluation/analysis of anti-corruption efforts as part of implementation of the Inter-American Convention Against Corruption and reported that Argentina's Senate had passed a law regarding funding of political parties.

AUSTRALIA: Reported that AWB, Rhine Ruhr and Alkaloids OFF cases continue; briefed on the Cole Inquiry, which issued findings November 24, 2006, and stated the expectation of appropriate law enforcement follow-up on the referrals by the Cole Inquiry of 12 individual for investigation and possible prosecution; advised that the Cole Inquiry had found that payments made by AWB to Iraq could not be classified as bribes under the Australian criminal code; noted that in follow-up to Phase 2 recommendations, Australia is considering amending the law that allows a defense if conduct was lawful in the country where payment was made; requested deletion of the Conoco Phillips case given dismissal by a U.S. District Court and deletion of the allegation against an Australian official; reported Oil Exploration/Mauritania and Anvil/Dikulushi Concession (DR Congo) investigations are ongoing.

AUSTRIA: Reported that OFF investigations are ongoing, but prosecutors are considering dropping case because of problems with documents received from the ICC and because the Iraqi

government charged all companies and no Iraqi public official benefited. After the Acting Chair noted continuing WGB and Secretariat concerns regarding the Schlaff/Oasis Casino (Israel)

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case, Austria del noted that Austria had responded "partly" to three requests for MLA; a fourth MLA request was pending; the limitation period was not in risk of running out; and Austria will provide more details in an oral follow-up in March. The Acting Chair took note that Austria had received four requests for MLA in the Schlaff case and is only now considering opening a case. The USdel echoed Chair's concern regarding Schlaff case and questioned the Austrian delegation's position regarding OFF prosecutions, noting the need for investigation if there is indication that acts committed by Austrian companies violated any laws. The Swedish delegation raised the possibility of Austria bringing a sanctions busting case. The Chair questioned whether Austria had passed legislation penalizing violations of UNSC sanctions. If it had not, it was incumbent that it does so promptly. The Austrian del said they will confer with prosecutors.

BRAZIL: Reported inquiries into OFF cases continued. The Univen Petroquimical (Bolivia) case is being investigated, but appears to be a tax evasion case; no proceeding has been open in the

Meat Exports (Russia) case. USdel inquired whether Brazilian authorities have the power to compel documents, and noted the case should remain on the matrix until authorities have taken reasonable steps to determine whether an allegation may be substantiated.

CANADA: Reported that as of December 12, 2006, a Director of Public Prosecutors has replaced the Federal Prosecution Service of the Department of Justice; Parliament is considering limiting how the Attorney General can instruct prosecutors, requiring such instruction be in writing and be made public; OFF investigations continue; re: Skytel (Haiti) case, said Canada understands an investigation is ongoing in the U.S., and Canada is ready to assist; re: Terra Seis case, reported company involved is a wholly owned Trinidad and Tobago subsidiary, USdel noted U.S. is looking for a more proactive stance, Canadian del does not want to duplicate efforts, but will take the issue back to Canadian authorities; Canadian prosecutors had found nothing to start investigations in the Dundee (Bulgaria), UN Procurement Fraud/Peacekeeping Ops; or Oil Exploration Companies (Mauritania) cases; reported Bangladesh is looking into Niko Resources (Bangladesh) case and Canada is prepared to assist; in ITXC (Nigeria) case, stated that the U.S. is investigating and Canada is prepared to assist; Acting Chair noted that WGB is waiting for further cases. USdel questioned whether Canada had asked for formal or informal MLA in the Terra Seis case regarding evidence that the parent company had authorized the conduct which took place in the foreign subsidiary or had asked Terra Seis to provide evidence or documents relating to whether anyone at the parent company had authorized a bribe.

CZECH REPUBLIC: Reported investigation continues in Cocoa Scandal (Ghana) case.

KOREA: Reported that a GOK UNCAC Task Force is considering an asset recovery bill; plans to participate in an APEC Anti-Corruption Meeting in Australia in February; re: Hyundai/Police Vehicles case (Kenya), has found no Korean company in Kenya; re: Kia/Hyundai (Slovakia), has found no sufficient evidence to investigate Kia; re: Powers/US Army Base, has not received information from U.S. Army.

SPAIN: Reported Spain had responded to an MLA request by Kenyan authorities in the AngloLeasing case; and reported that neither company involved in the case was registered in Spain and no inquiry had been opened in Spain.

ESTONIA: Reported that a law on liability of third parties will become effective February 1, 2007.

UNITED STATES: Reported that the U.S. ratified UNCAC on October 30, 2006; a new FCPA/money laundering case (Sapsizian/Alcatel)

was charged December 1, 2006 in case involving \$2.5 million in bribes and requested that matrix be updated accordingly; DOJ had issued two opiQon releases (one involved a contribution to an African country's Customs department to support anti-counterfeiting programs [approved]; the other involved the proposed retention of an attorney/law firm for acquisition of a large sum of foreign exchange [approved]); advised that former UN official Benon Sevan had been indicted Jan. 17, 2007 in New York with a co-conspirator in a case involving kickbacks; advised that Oily Rock/Azerbaijan Privatization Program case is scheduled for trial in October 2007; re: IBM/China Construction Bank and NCR/China Construction Bank, noted U.S. has an ongoing investigation involving Alltel and will expand it to see whether there are grounds to investigate IBM or NCR; re: Teleglobe (Nigeria), reported Yaw Osei Amoako had been charged and pled guilty; re: U.S. v. Giffen (Kazakhstan), reported that Second Circuit decision had been received and the case will be further litigated in the trial court regarding access to classified documents; re: Instrumentarium case, Finnish del noted that Costa Rica had not answered Finland's request for MLA, and that

Finland had renewed the request; requested removal of SAIC (Greece) case having conferred with French magistrate and company counsel; requested deletion of Chevron (Ecuador) case as no complaint ever received; requested deletion of Mowag (Chile) as conduct preceded the acquisition by a U.S. company.

FINLAND: Reported on progress on follow-up to recommendations, including consideration by a higher-level Working Group on whether to amend legislation to require an obligation of tax administration officials to report corrupt payments.

FRANCE: Reported that five cases have been initiated; re: Total/Iraq case, prosecution opened in October 2006; re: Alstom/Enelpower (Italy), awaiting information from Italian authorities whether Enelpower official is considered foreign public official; re: unidentified companies (EU Commission) case, reported that no French company was mentioned and France has no info, awaiting info from Belgium, U.K.del provided additional information that Czech and British companies who were approached by official had declined bribe solicitation and notified officials; Acting Chair suggested France raise the issue with Belgian authorities; re: Bolllore (Cameroon) case, French prosecutors had no information on Cameroon proceedings; in response to inquiry by USdel whether French authorities had contacted Cameroon authorities, French del reported they had not and were waiting for contact from Cameroon authorities. Acting Chair suggested France contact Cameroon directly; re: Bolllore (Ivory Coast), France reported no allegation of any crime in Ivory Coast; re: AREVA/Ethiopia Electric Power Co., reported that Ethiopian Power had lost case in Ethiopian court; re: Alcatel/ICE (Costa Rica), an MLA request to Costa Rica has received partial response; re: Thales Slush Fund, proceeding opened in France in December 2005 and investigation continues; re: Thales-DCN (India), investigation opened in 2006; re: THEC (Cambodia), same case as Thales Slush Fund; re: TSKJ (Nigeria) and Sagem/ID Cards (Nigeria) cases, proceedings continue; re: EU/Subsidized Cereals case, investigation launched by Paris prosecutor followed by MLA request by Belgian authorities, Belgian authorities are continuing proceedings and requested the case be deleted from matrix for France.

HUNGARY: Reported a conviction had been obtained in a foreign bribery offense case involving visas and the U.S. and Australian embassies; smuggling case on the Hungarian-Slovak border is in criminal court phase; matrix cases - prosecutors looked into cases but did not find sufficient information to begin investigation, requested deletion from matrix.

IRELAND: Reported cases still under investigation; Ireland Phase 2 examination in March.

ITALY: Reported that a court had denied a preventive seizure of assets in an OFF case; requested deletion of Immucor/Italian MD and Czech Tank Modernization/Officine Galileo cases from matrix.

JAPAN: Reported re: Hitachi/China Construction Bank case Japanese authorities are seeking information from the Chinese



court; USdel suggested Japanese authorities request company for information regarding internal inquiry; re: Japanese steel suppliers (China), Japan has requested information informally; reported Japan was seeking MLA in two cases (one on matrix and one not on matrix); Mitsui (China) and Eidai (Brazil) cases deleted from matrix.

LUXEMBOURG: Reported preliminary investigation of OFF case indicated no crime of bribery of foreign public official; investigation continuing to extent of another possible crime; will contact French colleagues regarding a case which appears to involve suspected foreign bribery of a Luxembourg public official.

NORWAY: Reported no developments in cases, but requested that

Steps Taken report reflect Norway had ratified UNCAC June 29, 2006.

NETHERLANDS: Reported in the OFF/Trafigura case a plea agreement between parent company in U.S. in which company will be fined and Netherlands looking into matter; Trafigura/Jamaica case is in prosecution in Netherlands; re: Shell/Iran, there is no indication of foreign bribery by Shell and delegation proposes deletion; re: Mittalgate/Iran, the allegation was found to be false; re: TSKJ/Nigeria, case is not under independent investigation in Netherlands; U.S. will request MLA for Netherlands, which will act on it; reported re: EU/Subsidized Cereals case, a Dutch national is being tried in Belgium and the case should be removed from matrix for Netherlands; U.S. delegation inquired about status of Mr. Pluimers, whose extradition was requested five years ago.

U.K.: Reported UNCAC has been extended to the British Virgin Islands and Cayman Islands will present bill to extend both the OECD Convention and UNCAC; reported opening of nine preliminary inquiries, most of which are not reflected in the matrix; reported a number of operations undertaken by the new City Police Unit; noted the U.K. may require MLA from the U.S. in the Weir case; re: UN Procurement Fraud/Peacekeeping case, reported that U.K. expects to receive information from the U.N. soon; re: Oil Exploration companies (Mauritania) case, U.K. is in contact with Australian authorities; requested deletion of Mabey and Johnson (Iraq, Papua New Guinea and Philippines) case, as attempts to obtain information has been unsuccessful; re: BOTEC (Botswana), UK has sought information from Botswana without success, requests deletion; requests deletion of Royal Dutch Shell (Iran) case; re: Lincoln Park (U.S.) case, notes Potter sentenced in U.S. and UK does not propose trying him in U.K, requests deletion; requests deletion of GlaxoSmithKline (Germany) case as it involved old allegations; re: Anglo-leasing (Kenya), U.K. is seeking more information from Kenya.

SLOVAK REPUBLIC: Requested deletion of Multinational Smuggling Ring case, as investigation indicated it was a domestic corruption case in Hungary.

SWEDEN: Reported that it had no specific information to share regarding the unidentified companies (EU Commission) case, but Sweden is expecting assistance from the U.K. SFO; requested deletion of Skanska (Czech Republic) case as no information obtained regarding connection to Sweden; re: Ericsson/ICE (Costa Rica), reported receipt of assistance from French prosecutor, but no formal investigation initiated, still seeking evidence to initiate case.

SWITZERLAND: No new case information, but prosecutors plan to attend the March WGB meeting; seeking information from the Secretariat on the Roche (Turkey) case.

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TURKEY: Reported Barmek (Azerbaijan) case is ongoing; requested deletion of Customs Fraud/Bulgarian Checkpoint case in view of lack of allegations.

Bulgaria, Denmark, New Zealand, Portugal and Slovenia were absent from the Tour de Table. Poland and Mexico reported no

new developments. Belgium, Greece, Slovak Republic and Sweden reported Oil-For-Food (OFF) cases were proceeding.

## PHASE 2 FOLLOW-UP REPORTS

¶12. (U) Within one year of the WGB's approval of the Report of Phase 2 Examination, countries must, at a minimum, provide an oral report on steps it has taken or plans to take to implement the WGB's priority recommendations. A detailed written follow-up report must be provided within two years.

### ITALY (WRITTEN FOLLOW-UP)

¶13. (SBU) Lead examiners Germany and U.K. shared grave concerns regarding Italy's failure to implement the recommendation to amend its legislation to exclude the defense of concussione from the offense of foreign bribery, leaving serious gaps in its implementation of Convention obligations. Italy maintained that concussione should not be considered as involving bribery of a public official, but rather as a defense to extortion committed by a public official. The lead examiners differed regarding appropriate next steps. The U.K. considered that monitoring and follow-up would not address the deficiency and recommended the WGB send a letter to draw the relevant Minister's attention to Italy's failure to implement adequately the Convention and Revised Recommendation, a position strongly supported by the U.S. delegation. Germany favored extending the follow-up and monitoring period and postponing a letter to the Minister, a position which the Slovak and Czech Republics supported. The Acting Chair advised that ordinary procedure regarding non-compliance with a strong recommendation would be to put the Party on notice. Although the recommendation stands, given the requirement for consensus-minus-one support for further action, the Acting Chair advised Italy it must report back to the WGB in one year's time on its implementation of the recommendation.

¶14. (SBU) Examiners also noted a recommendation regarding tax amnesty had lost its relevance as the tax amnesty program was not continued; that Italy had partially implemented a recommendation to amend provisions on false accounting, but the new law may not be sufficiently dissuasive; steps were underway to implement a recommendation to extend the length of the "ultimate" limitation period as a bill is pending; recommendations regarding cooperation between MOJ and law enforcement on MLA had been satisfactorily implemented; clarified a follow-up issue by confirming that a decree relating to liability of legal persons covered State-owned enterprises.

### KOREA (WRITTEN FOLLOW-UP)

¶15. (SBU) Lead examiners Australia and Finland reported significant follow-up of recommendations, including very good progress in awareness raising efforts. Regarding a recommendation to ensure that the defense of social customs is not applicable to the foreign bribery offense, lead examiners advised that case law in 2006 recognized that the defense does not apply to foreign bribery. Korea had made no progress on recommendations to consider increasing the maximum penalty for foreign bribery, to clarify that Korean foreign bribery legislation applies when a bribe is transmitted directly to a third party or to consider ensuring that government and government-funded agencies that provide contracting opportunities to Korean companies have authority to audit companies suspected or convicted of bribing foreign public officials.

### AUSTRALIA (ORAL FOLLOW-UP)

¶16. (SBU) The Australian delegation briefed on the recommendations made by the Cole Inquiry, which had investigated Australian actions in relation to the UN Oil-for-Food program. The Cole Inquiry recommended the Criminal Code be changed to include offenses for acting contrary to UN sanctions that Australia has agreed to uphold. The Australian government has established a Task Force to consider possible prosecutions as recommended by the Cole Inquiry. In the context of the Cole Inquiry findings, Australia is considering a WGB recommendation



to amend the defense for conduct that is "lawful" in the foreign public official's country to ensure consistency with Commentary 8 of the Convention. The Australian del assured that an appropriate approach will be implemented. Although the Cole Inquiry did not have a mandate to review Australia's tax code, the Australian Tax Office (ATO) is examining how possible changes to the Criminal Code to include sanctions busting would

require tax legislation changes. Such changes, which will take some time, will likely to be prospective. Australia has continued with its foreign bribery awareness campaign; placed a higher priority on corruption and foreign bribery by the Australian Federal Police (AFP); clarified that Commonwealth agencies must report all cases of suspected foreign bribery to the AFP; clarified that all Australian Public Service employees must report any instances of bribery that they observe in the course of their employment; is reviewing whistleblower protection provisions; is reviewing penalties for the offense of bribing a foreign public official; and has issued a direction to all prosecutors that when deciding whether to bring a prosecution for bribery of a foreign public official, the Director of Public Prosecutions should not be influenced by considerations specified in Article 5 of the Convention.

#### SLOVAK REPUBLIC (ORAL FOLLOW-UP)

¶17. (SBU) The Slovak delegation briefed on actions implementing recommendations regarding: (a) awareness raising (issuance of guidelines regarding auditors' reporting obligations; dissemination of anti-bribery information by EXIMBANKA SR, Foreign Ministry and overseas representations, tax authorities (translation and distribution of OECD Bribery Awareness Handbook for Tax Examiners), and the Supreme Audit Office (training)); (b) prevention and detection of foreign bribery through taxation (enactment of legislation expressly denying tax deductibility of bribe payments to foreign public officials), export credits (reformulation of exporters' statement regarding submission of agents' commissions); accounting and auditing (training of auditors in International Auditing Standards, training on proceeds of crime and corruption; preparation and publication of guidelines on the duty of auditors to report unusual transactions by the Slovak Auditors' Chamber); anti-money laundering measures (interagency discussions and training); (c) raising awareness in the private and public sector of the obligation to report foreign bribery cases and to raise awareness about whistleblower protection (no apparent progress); (d) investigation of foreign bribery (training police officers and recruits on investigating foreign bribery and coordinating meetings to enhance cooperation among law enforcement agencies involved in combating foreign bribery); (e) need to amend legislation to exclude defense of "effective regret" (Ministry of Justice analysis is currently pending receipt of additional information from Special Prosecution Office); (f) prosecution of foreign bribery (increased penalties for false accounting; GOS decided not to submit to Parliament draft law to abolish Special Court and Office of Special Prosecutor, but will attempt to address constitutionality issues separately; reported admission of one judge to Special Court; organized training sessions on foreign bribery for Special Judges and Special Prosecutors; and regarding recommendation to establish liability of legal persons for foreign bribery without delay, reported draft law submitted to Parliament in February 2006 has not yet been discussed).

#### REVISION OF ANTI-BRIBERY INSTRUMENTS AND ESTABLISHMENT OF POST-PHASE II MONITORING MECHANISM

¶18. (U) The Acting Chair reported that correspondence from the International Chamber of Commerce to Secretary General Gurria strongly encouraged the WGB to adopt a Post-Phase 2 mechanism for robust monitoring. The Secretariat presented three draft papers setting out options based on discussions at the October WGB meeting. The Secretariat's preliminary work, welcomed by many delegations, contemplates simultaneous completion by October 2008 of the revision of anti-bribery instruments (Revised Recommendation, possible additions to Commentaries, and interpretive notes) and development of a post-Phase 2 monitoring mechanism, which would focus on progress made on outstanding Phase 2 recommendations, enforcement results, new issues raised

by changes in legislative or institutional framework for implementing Convention and horizontal thematic issues. While

current OECD rules do not permit public posting of draft documents during public consultation process, Secretariat officials said the issue is under active review. The Swiss and Argentine delegations expressed concerns about how to accommodate the additional burden on workload these activities will impose.

¶19. (U) The Secretariat's suggestion for establishment of two sub-groups to work on (1) criminalization issues and (2) preventive mechanisms such as export credit, official development assistance, public procurement, auditing and non-tax deductibility drew mixed comments from several delegations, with some expressing concerns that subgroups could impose additional travel and workload burdens, especially on smaller delegations.

#### OUTREACH ACTIVITIES: SPECIAL SESSION ON CHINA

¶20. (U) Kong Xiang Ren, Deputy Director-General of the Ministry of Supervision, which coordinates China's Anti-Corruption Campaign, briefed on China's efforts to spur economic development while controlling corruption. Kong noted that President Hu in July 2005 had directed the government to focus on the issue of bribery in commercial transactions. Kong described the legal framework supporting those efforts, including a 2007 law on money laundering and the recent ratification of UNCAC. He said efforts were shifting from prosecution to prevention, and the government was building public awareness through the use of 24-hour hotlines and Integrity Programs to educate public servants and the public. China continues to establish the systems and institutions needed to fight corruption. While China has not yet enacted legislation to prohibit the bribery of foreign public officials, the government recognizes the growing risks posed by Chinese companies which are increasingly active overseas and is establishing codes of conduct that prohibit bribery. The government supports self-examination and self-ratification by both public and private enterprises, and focuses efforts to combat bribery in various activities and sectors. Kong advised that from August 2005 to November 2006, over 15,000 cases of commercial bribery involving 4 billion yuan were identified, of which more than 3,000 involved public officials.

¶21. (U) Secretariat Legal advisor Niccola Bonucci briefed the Chinese del on OECD Anti-bribery instruments, including the Convention, the Revised Recommendation of 1997, the 1996 Recommendation on Non-Tax Deductibility of Bribes, and the 2006 Recommendation on Bribery and Export Credits, underscoring the need for a level playing field in international business transactions and an intensive monitoring process to ensure that all members are meeting their obligations.

¶22. (U) In a question and answer session, the Chinese del reported that China: faces no limitation on jurisdiction in bribery of foreign public officials, but would have difficulty in obtaining evidence and would require MLA from other countries; recognizes the liability of legal persons; has criminal, civil and administrative sanctions; is party to 85 treaties with other countries addressing issues such as MLA and extradition; can provide MLA to Parties not covered by a treaty on a reciprocity basis through diplomatic channels; and had authorized Hong Kong to provide MLA in OFF cases. The delegation advised that a new anti-money laundering law contained extensive recordkeeping requirements and that while China lacks specific whistleblower protection, administrative rules protect them and a specific law is being considered. Chinese authorities expressed interest in exchanging information with the WGB and in gaining additional know-how from the group's experience with review and monitoring mechanisms, as it moves forward to implement UNCAC.

¶23. (SBU) On the margins of the WGB meeting, the delegation, which consisted of three Ministry of Supervision officials and one Foreign Ministry official (Xu Yu, Deputy Director of Treaty

and Law), approached USdel and expressed great interest in prosecuting and extraditing Chinese citizens suspected of corruption who had fled to the U.S.

#### OUTREACH (CONTINUED)

¶24. (U) The Secretariat briefed on outreach activities, including:

-- The ADB-OECD Anti-Corruption Initiative for Asia and the Pacific, which involves 27 countries, features a self-reporting monitoring mechanism. The initiative participants will launch in 2007, on a trial basis, a peer review process essentially based on the WGB's Phase 2 examinations. Malaysia has volunteered to be the first country reviewed. Organizers would welcome participation by WGB members in the review process, in addition to the three WGB members who currently participate in the ADB-OECD initiative (Korea, Japan and Australia);

-- The Anti-Corruption Network for Eastern Europe and Central Asia (ACN), in which reviews have been completed for Armenia (which found some progress) and Ukraine (lack of progress). The Russian Federation attended the December ACN meeting and expressed interest in reactivating its involvement. Organizers have advised Russia it has to take official steps by mid-2007 to complete its review or the group will consider suspending it from participation. Reviews will next be completed for Kazakhstan and Kyrgyzstan. A seminar, co-organized by the OSCE, COE, UNODC and OECD, to raise awareness and focus on international legal standards for criminalization of corruption covering the OECD, COE and UN anti-corruption conventions will take place in Almaty, Kazakhstan, March 26-28, 2007.

-- A representative from the Council of Europe reported that the Group of States Against Corruption (GRECO), which will have 44 members as of February 1, 2007, launched new third phase evaluations in January 2007, including transparency of political party funding.

-- A representative from the Organization of American States reported that the Inter-American Convention Against Corruption (IACC) has been ratified by 33 of 34 OAS member countries and that the OAS has created a mechanism for follow up. A Joint OAS-OECD anti-corruption and integrity meeting is tentatively scheduled for Spring 2007 in Washington.

-- Ted Greenberg briefed on WB technical assistance to member countries on financial issues such as anti-money laundering and the "Strengthen Bank Group Engagement on Governance and Corruption" initiative. He said the WB is working with FATF to build confiscation regimes, develop a Best Practices Book for financial supervisors in the areas of anti-money laundering and countering terrorism finance, and is preparing a report on corruption and money laundering related to illegal logging.

#### ANNUAL REPORT/STATISTICS

¶25. (U) The WGB discussed a Secretariat-prepared draft annual report for 2006 and agreed to go forward with it to increase visibility. A number of delegations (France, U.S.) favored inclusion of a statistical annex as soon as such information is available to provide quantitative, as well as qualitative information, which would be useful, given the limitations on existing indices on perceptions of corruption. The WGB then discussed a draft instrument prepared by the Secretariat to compile more comprehensive foreign bribery and related accounting misconduct enforcement and sanctions statistics. While most delegations appeared to support the effort, some noted that not all proposed categories of information would be available in their countries or could require additional

explanatory information in the instrument. Members agreed that delegations should attempt to identify the statistical information currently available and forward that information and any additional suggestions regarding the draft instrument to the Secretariat as soon as possible and prior to the March meeting.

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EXPORT CREDIT GROUP ANTI-BRIBERY ACTIVITIES

¶26. (U) A representative of the OECD ECG reported that its Action Statement was transformed into an OECD Council Recommendation on December 14, 2006. Most countries have implemented the recommendation and the ECG expects full implementation by March 2007.

OTHER ITEMS: ELECTIONS, CALENDAR

¶27. (U) WGB members reelected Dr. Mark Pieth WGB Chair and Dr. Maria Gavouneli Vice-Chair of the Working Group. They also elected candidates from France (Guillaume Vanderheyden); Italy (Valeria Piccone) and Chile (Marcelo Garcia Silva) to fill three vacant Management Group seats.

¶28. (U) The Acting Chair briefed on the invitation by the Government of Italy to hold a Prosecutors' Meeting in Rome in November as part of an event marking the 10th anniversary of the Convention and the need to coordinate with the OECD Committee of Fiscal Affairs on activities involving anti-bribery efforts.

¶29. (U) The March WGB plenary meeting will take place March 12-14, with preliminary meetings to begin March 11.  
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